

From: Kevin Krumwiede
To: Microsoft ATR
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Subject: Microsoft Settlement

I am a student and independent software developer. Though I am not well-versed in legal matters, I found the provisions of the proposed Microsoft settlement fairly easy to understand. However, as an independent software developer, I believe I have a much better understanding of their implications than the average person.

I do not believe the provisions of the proposed settlement will significantly affect Microsoft's stranglehold on the market, for the reasons I have outlined below.

It is important to remember that Microsoft basically invented the industry they dominate. Microsoft's rise to power was contemporary and symbiotic with the invention and widespread adoption of personal computers. Prior to that time, computers were not consumer products. It was largely a hardware market, and software was something that just came with the hardware. Much of the software in use was independently developed and freely distributed. Microsoft cunningly exploited the growing PC market to gain a monopoly on the operating systems and software that runs them.

Today, the only significant threat to Microsoft's monopoly is the same kind of independently-developed, freely-distributed software that existed before it -- software developed by people like me. Perhaps as a backlash against Microsoft's business practices, and spearheaded by the operating system known as Linux, free software has made a significant comeback in limited areas of the market. However, it has been unable to gain a foothold on the desktop -- the market for operating systems and applications currently dominated by Windows 98/ME/XP, Microsoft Office, and Internet Explorer -- for reasons not sufficiently remedied by the proposed settlement.

The settlement wisely recognizes the ubiquity of Microsoft's proprietary APIs and protocols and the necessity of making them available to developers who can't compete without them and often can't (legally) reverse-engineer them (sections III.D and III.E). Conspicuously lacking is a similar provision concerning proprietary file formats, which are crucial to any interoperability with Microsoft's Office products. To its credit, the settlement also prohibits many of the anti-competitive practices that Microsoft has used to maintain its monopoly.

But here is the key shortcoming of the proposed settlement: none of its provisions benefit Microsoft's real competition, the free software developers. We are not officially-recognized ISV's, IHV's, IAP's, ICP's, or OEM's; we are a loose-knit organization of individuals around the world, working on countless independent projects in our free time and with no expectation of monetary retribution. Few of us would ever "[have] a

reasonable business need for the API, Documentation or Communications Protocol for a planned or shipping product" (section III.J.2(b)) or "[meet] reasonable, objective standards established by Microsoft for certifying the authenticity and viability" of our development efforts (section III.J.2(c)). Few of us would meet the "reasonable and non-discriminatory" terms of the provisions (particularly section III.I.1) and thus would not benefit from sections III.D and III.E. Likewise, few of us can afford to "submit, at [our] own expense, any computer program using such APIs, Documentation or Communication Protocols to third-party verification" (section III.J.2.(d)).

The solution, as I see it, is to require that Microsoft publish the specifications of its proprietary APIs, protocols, and file formats, making them available not just to qualifying competitors, but to all competitors. This would ensure interoperability of all independently-developed software with Microsoft's products, eliminating the single greatest obstacle Microsoft has employed to keep upstart competitors out of the market.

Thank you for considering my comments.

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